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4579 Laclede Ave.  
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**COPY MAILED**  
**DEC 18 2008**

In re Application of :  
Klotzer : DECISION ON APPLICATION  
Application No. 10/757,615 : FOR PATENT TERM ADJUSTMENT  
Filed: January 13, 2004 :  
Atty. Dkt. No.: 16663/042001 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT", filed July 10, 2008. This matter is being properly treated under 37 CFR 1.705(b) as an application for patent term adjustment.

The application for patent term adjustment (PTA) under 37 CFR 1.705(b) is **DISMISSED**.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b), mailed April 10, 2008, indicated a patent term adjustment (PTA) to date of zero days. The instant application for PTA was timely filed July 10, 2008, at the time of submission of the issue fee payment.

The correct PTA at the time of the allowance is zero days, as indicated on the Determination of Patent Term Adjustment mailed April 10, 2008.

Applicant disputes the reduction of 409 days accorded in connection with the reply (amendment), filed December 20, 2007.

A non-final Office action was mailed June 6, 2006. A reply was submitted November 6, 2006. The reply was non-compliant, as indicated by the Notice of Non-Compliant Amendment mailed November 20, 2007. A reply correcting the omissions in the previous reply was submitted December 20, 2007. Accordingly, the adjustment is properly reduced 409 days in accordance with 37 CFR 1.704(c)(7).

Applicant argues that the delay was caused by the Office rather than applicant. Applicant argues that applicant should not be charged with the reduction of 409 days because the Office delayed in mailing the Notice of Non-Compliant Amendment.

Applicant's arguments have been carefully considered, but are not found convincing. Submission of the reply was necessitated by applicant who submitted an improper amendment on November 6, 2006. Applicant could have avoided the delay caused by the submission of the reply by ensuring that the amendment submitted November 6, 2006 was properly submitted within the meaning of 37 CFR 1.33(b). The fact that the Notice of Non-Compliant Amendment was mailed November 20, 2007 does not negate the fact that applicant was the requisite cause of the delay at issue.

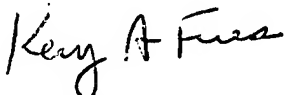
Accordingly, at the time of allowance, the application is entitled to an adjustment of zero days, as indicated in the Determination of Patent Term Adjustment mailed April 10, 2008.

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

Receipt is hereby acknowledged of the required patent term adjustment application fee of \$200.00. The application fee will not be refunded as submission of the application fee is a prerequisite prior to consideration on the merits of 37 CFR 1.705.

This application is being forwarded to the Office of Patent Publications for further processing.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.



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